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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington D.C. 20554

In the Matter of Amendment of the)
Commission's Rules to Establish) Gen Docket No. 90-314
New Personal Communications Services)

To: The Commission

**OPPOSITION TO PETITION TO RESCIND
OR SUSPEND AUTHORIZATIONS**

Communications International Corporation ("CIC"), by its counsel, hereby submits its Opposition to the Petition to Implement Mandate of United States Circuit Court of Appeals for the Sixth Circuit filed by Cincinnati Bell Telephone Company ("CBT" or "Petitioner").^{1 2} The Petition to Implement is procedurally deficient as it relates to the relief requested involving the previously issued PCS Broadband licenses. Furthermore, CBT's request that the FCC afford the same opportunity to participate in PCS as it would have had in the absence of the cellular attribution rules as originally promulgated is without merit. In support whereof, the following is submitted.

¹ Petitioner specifically requests that the FCC issue a moratorium on further construction of PCS service facilities in the Cincinnati MTA. CIC is the PCS licensee for Block B in American Samoa. CIC submits this Opposition out of an abundance of caution, in order to challenge the extension of any aspect of the requested relief by the FCC to its own PCS license.

² This Opposition was due to be filed on December 21, 1995. However, due to the expiration of Congressional funding, the Federal government was closed on that date and remained closed until January 11, 1996. This Opposition is being filed on the first date after the due date upon which the Federal government is open to conduct business, and is thus timely filed.

I. Petitioner's Pleading is Procedurally Defective

Petitioner has asserted no jurisdictional basis for the submission of its pleading in this case. Petitioner cites no provision of the Communications Act of 1934, as amended, to support the filing of this Petition to Implement. Furthermore, Petitioner cites no administrative rule of the Commission which would allow such pleading. Petitioner's pleading is a superfluous effort to prod the Commission to take what action it is already bound by law to perform, i.e., execute the mandate of the Circuit Court of Appeals in this particular case. Since there is no procedural basis for the filing of this pleading, it should be dismissed.

I. Petitioner's Pleading is Substantively Defective

CBT's general request that the FCC afford the same opportunity to participate in PCS as it would have had in the absence of the cellular attribution rules as originally promulgated is also without merit. CBT's request in this regard is a thinly veiled request for the Commission to rescind the PCS licenses previously issued to the A and B Block auction winners. Such action would have the type of retroactive effect which is barred by case precedent. See *McElroy Electronics Corp.*, 77 RR 2d 1187 (1995), citing *Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1499 (1994) (the court must ask whether the new provision attaches new legal consequences to events completed before its enactment).

In this case, the A and B Block PCS auctions have been conducted, and the winners have paid for their licenses in accordance with statutory requirements. Consequently, the well-

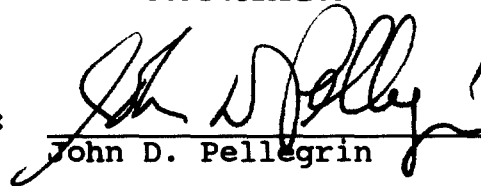
established criteria used in the *McElroy* decision to determine whether agency decisions should be applied retroactively clearly indicate that the relief requested would be improperly retrospective in this case. Consequently, to rescind CIC's PCS broadband license for American Samoa based on the CBT request would be improper.

Wherefore, the above premises considered, CIC respectfully requests that the Commission dismiss the Petition To Implement Mandate of United States Circuit Court of Appeals for the Sixth Circuit filed by Cincinnati Bell Telephone Company.

Respectfully submitted,

COMMUNICATIONS INTERNATIONAL
CORPORATION

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Dated: January 11, 1996

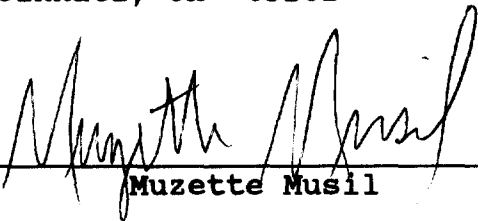
CERTIFICATE OF SERVICE

I, Muzette Musil, a Research Assistant with the law firm of John D. Pellegrin, Chartered, do hereby certify that I have on this 11th day of January, 1996 transmitted a copy of the attached **"Opposition To Petition To Rescind Or Suspend Authorizations"**, via U.S. Mail, postage pre-paid, to the following:

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*Via Hand Delivery